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SENATE BILL 860

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO TAXATION; AUTHORIZING A MUNICIPALITY OR COUNTY TO ENACT AN ORDINANCE IMPOSING A TRANSFER TAX UPON CERTAIN TRANSFERS OF RESIDENTIAL PROPERTY; SPECIFYING THAT THE REVENUES GENERATED BY THE PROPERTY TRANSFER TAX BE USED FOR AFFORDABLE HOUSING AND OPEN SPACE PURPOSES; MAKING TRANSFER INFORMATION CONFIDENTIAL; PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Transfer Tax Act".

Section 2. DEFINITIONS. -- As used in the Transfer Tax Act:

A. "consideration" means the full amount of money and the value of any other thing of value received by a transferor in payment or exchange for a transfer of property, including, without limitation, the amounts or value of any

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1 encumbrances, unpaid property taxes or similar charges against
2 the property existing at the time of transfer and assumed or
3 paid by the transferee;

4 B. "county" means a county, including an H class
5 county;

6 C. "governing body" means the city council or city
7 commission of a city, the board of trustees of a town or
8 village, the county commission of a county or the county
9 council of an H class county;

10 D. "government entity" means the United States, the
11 state and any agencies, branches, boards, commissions,
12 political subdivisions and instrumentalities of the United
13 States or the state;

14 E. "municipality" means any incorporated city, town
15 or village, whether incorporated under general act, special act
16 or special charter, and an H class county;

17 F. "person" means an individual or any other legal
18 entity;

19 G. "property" means "residential property" as
20 defined in the Property Tax Code;

21 H. "tax" means the municipal property transfer tax
22 or the county property transfer tax authorized to be imposed
23 pursuant to the Transfer Tax Act;

24 I. "transfer" means the passage from one person to
25 another of the legal or equitable title to property but does

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1 not include transfers:

2 (1) in which the transferor or transferee is a
3 government entity;

4 (2) in which only a security interest in
5 property is transferred to the transferee;

6 (3) made pursuant to the order or judgment of
7 a court of competent jurisdiction;

8 (4) as a result of intestate succession,
9 distribution to a devisee pursuant to a will or distribution to
10 a beneficiary pursuant to a trust;

11 (5) between husband and wife with only
12 nominal actual consideration for the transfer;

13 (6) that are noncontractual transfers; or

14 (7) in which the transferor or the transferee
15 is an organization exempt from federal taxation under Section
16 501 of the Internal Revenue Code of 1986, as amended;

17 J. "transfer instrument" means the document by
18 which a transfer is effected or evidenced and includes without
19 limitation any deed, real estate contract or memorandum of real
20 estate contract;

21 K. "transferee" means the person to whom a transfer
22 is made by a transfer instrument; and

23 L. "transferor" means the person from whom a
24 transfer is made by a transfer instrument.

25 Section 3. IMPOSITION OF TAX--DENOMINATION AS "MUNICIPAL

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1 PROPERTY TRANSFER TAX" OR "COUNTY PROPERTY TRANSFER TAX" -- LOCAL
2 OPTION -- ELECTION REQUIRED. --

3 A. The governing body of a municipality may adopt
4 an ordinance imposing a tax in accordance with the provisions
5 of the Transfer Tax Act upon the transfer of property located
6 within the boundaries of the municipality. The tax shall be
7 known as the "municipal property transfer tax". The ordinance
8 imposing the tax shall include provisions for allocating the
9 consideration upon which the tax is calculated when only a part
10 of the property transferred is located within the boundaries of
11 the municipality.

12 B. The governing body of a county may adopt an
13 ordinance imposing a tax in accordance with the provisions of
14 the Transfer Tax Act upon the transfer of property located
15 within the area of the county outside municipal boundaries.
16 The tax shall be known as the "county property transfer tax".
17 The ordinance imposing the tax shall include provisions for
18 allocating the consideration upon which the tax is calculated
19 when only a part of the property transferred is located within
20 the boundaries of the county or within the area of the county
21 outside the boundaries of a municipality.

22 C. The ordinance enacted imposing a tax pursuant to
23 the provisions of Subsection A or B of this section:

24 (1) shall specify the rate of the tax,
25 including the amount of the affordable housing exclusion;

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1 (2) shall specify the period of time during
2 which the tax will be imposed, if the tax is imposed for a
3 limited number of years; and

4 (3) shall specify that the revenues from the
5 tax shall be deposited in special funds in the county or
6 municipal treasury, as applicable, to be used in equal amounts
7 for affordable housing and open space purposes as provided in
8 Section 6 of the Transfer Tax Act.

9 D. An ordinance imposing a tax authorized pursuant
10 to this section or repealing or amending the tax shall not go
11 into effect until after an election is held and a majority of
12 the voters voting in the election votes in favor of the
13 ordinance. The governing body shall adopt a resolution calling
14 for an election within seventy-five days of the date the
15 ordinance is adopted on the question of imposing, repealing or
16 amending the tax. In the case of a municipal property transfer
17 tax, the question shall be submitted to the voters of the
18 municipality as a separate question at a regular municipal
19 election or at a special election called for that purpose by
20 the governing body. In the case of a county property transfer
21 tax, the question shall be submitted to the voters in the area
22 of the county outside municipal boundaries as a separate
23 question at a general election or at a special election called
24 for that purpose by the governing body. A special election
25 shall be called, conducted and canvassed in substantially the

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1 same manner as provided by law for general elections, in the
2 case of a county, or as provided in the Municipal Code for
3 special elections, in the case of a municipality. If a
4 majority of the voters voting on the question approves the
5 ordinance, then the ordinance shall become effective in
6 accordance with the Transfer Tax Act. If the question of
7 imposing, repealing or amending a municipal property transfer
8 tax or a county property transfer tax fails, the governing body
9 shall not again propose the imposition, repeal or amendment of
10 the tax for a period of one year from the date of the election.

11 Section 4. RATE OF TAX. --

12 A. The tax shall be imposed by a governing body at
13 a graduated rate not to exceed a five percent marginal rate on
14 the consideration that exceeds the affordable housing
15 exclusion.

16 B. As used in this section, "affordable housing
17 exclusion" means the amount determined by the governing body of
18 a municipality or county, as applicable, to be the maximum
19 value of a property that is affordable for a low- or moderate-
20 income person or household in that county or municipality.

21 Section 5. PAYMENT OF TAX. --The tax shall be paid by the
22 transferee.

23 Section 6. USE OF TAX--AFFORDABLE HOUSING AND OPEN
24 SPACE. --

25 A. Fifty percent of the net receipts from a tax

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1 shall be deposited in a local housing trust fund in the
2 municipal treasury, in the case of a municipal property
3 transfer tax, or county treasury, in the case of a county
4 property transfer tax. Money in the fund shall be used to
5 provide affordable housing in the municipality or county, as
6 applicable, for persons or households of low- to moderate-
7 income, in accordance with law enacted to implement the
8 provisions of Subsection F of Section 14 of Article 9 of the
9 constitution of New Mexico.

10 B. Fifty percent of the net receipts from a tax
11 shall be deposited in a special fund in the municipal treasury,
12 in the case of a municipal property transfer tax, or county
13 treasury, in the case of a county property transfer tax to be
14 expended by the municipality or county, with the advice and
15 recommendation of the open space board, for acquisition either
16 in fee or in less-than-fee interests for permanent protection
17 of lands that have conservation value. The acquisitions may
18 include agricultural land, such as ranch, farm or forest land;
19 habitat for plant or animals of ecological significance; scenic
20 open space that can easily be seen by the public; land for
21 public recreational use; or land with historic or
22 archaeological sites. As used in this subsection, "permanent
23 protection" means that the conservation value for which the
24 land was acquired will be protected in perpetuity by a method
25 such as a perpetual conservation easement.

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1 C. Upon approval of a municipal or county property
2 transfer tax, the governing body of the municipality or county
3 shall establish an affordable housing board and an open space
4 board. Each board shall consist of nine members appointed by
5 the governing body for terms determined by the governing body.
6 The boards shall advise, assist and make recommendations to the
7 governing body regarding use of the municipal or county
8 property transfer tax revenues.

9 Section 7. TRANSFER INSTRUMENTS--PAYMENT OF TAX WITH
10 RECORDING FEES.--For property transfers in a municipality that
11 has imposed a tax or in the area outside municipal boundaries
12 in a county that has imposed a tax, a transfer instrument
13 evidencing a transfer of property in that municipality or
14 county area shall not be accepted for recording by the county
15 clerk unless at the time of recordation of the transfer
16 instrument is requested there is presented with the transfer
17 instrument an affidavit completed in accordance with Section 8
18 of the Transfer Tax Act. Any tax due shall be paid to the
19 county clerk with the recording fees.

20 Section 8. AFFIDAVIT OF TRANSFEREE REQUIRED. --

21 A. For every transfer in a county or municipality
22 that has imposed the tax, as applicable, the transferee shall
23 prepare at or after the time the transfer instrument is
24 executed an affidavit of transfer completed in accordance with
25 this section.

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1 B. The affidavit of transfer shall include at least
2 the following information:

3 (1) the complete names of the transferor and
4 transferee appearing on the transfer instrument;

5 (2) the current residence address and mailing
6 address of both the transferor and the transferee;

7 (3) the legal description of the property
8 transferred as it appears on the transfer instrument;

9 (4) the consideration; and

10 (5) the amount of tax due, if any.

11 C. Upon receiving payment from the transferee, the
12 county clerk shall deliver the tax collected and the affidavit
13 to the county treasurer by the end of the next business day.
14 If the tax is a municipal property transfer tax, the county
15 treasurer shall transfer the net proceeds to the municipal
16 treasurer.

17 D. An amount not to exceed two percent of the
18 proceeds from the municipal property transfer tax or the county
19 property transfer tax may be retained by the county collecting
20 the tax to defray administrative costs.

21 Section 9. FILING AND CONFIDENTIALITY OF AFFIDAVIT. --

22 A. The original affidavit shall be kept in a
23 separate file maintained for that purpose by the county
24 treasurer. The file shall be maintained in a manner that
25 permits ease of location and retrieval of information by name

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1 of transferee. The information from the affidavit may be
2 entered and retained in an electronic data processing system,
3 and in that case the original form may be destroyed.

4 B. The information contained on the affidavit is
5 confidential and shall not be disclosed except:

6 (1) to employees in the county treasurer's
7 office of the county imposing the tax or of the county in which
8 a municipality is imposing the tax and employees in the county
9 clerk's office, including persons performing official auditing
10 of the functions and records of those offices, any of whom must
11 have a demonstrated need for the information in carrying out
12 their official duties;

13 (2) under an order of a court of competent
14 jurisdiction; or

15 (3) for statistical purposes if used in a way
16 that the information is not identifiable as applicable to any
17 transferor or particular property.

18 Section 10. CRIMINAL PENALTY. -- A person who knowingly
19 makes a false statement on an affidavit of transfer required by
20 a municipal or county ordinance imposing a tax pursuant to the
21 Transfer Tax Act is guilty of a misdemeanor and upon conviction
22 shall be punished by the imposition of a fine of not more than
23 five hundred dollars (\$500).